IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.951 of 2000.

Judgment reserved on: 13.6.2007

Date of decision: 12th July, 2007.

Roshan Lal Chauhan ....Petitioner

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.K.D.Shreedhar, Advocate.

For Respondents: Mr.M.S.Chandel, Advocate General with Mr.R.M.Bisht, Dy.A.G.

Deepak Gupta, J.

This writ petition is directed against the order of the learned H.P. State Administrative Tribunal dated September 26, 2000 whereby the Original Application filed by the petitioner was allowed to a limited extent and some of the reliefs claimed by the petitioner were rejected.

Brief facts of the case are that the petitioner was appointed as a Assistant Chemist in the Public Works Department on December 3, 1970 in the pay scale of Rs.130-4-300. The case of the petitioner is that as Assistant Chemist he was responsible for the Physical, Chemical and Bacteriological examination of water samples.

According to him he performed his duties independently and his job was purely technical in nature. The petitioner was placed on work charge basis and continued to be treated on work charge basis. He made various representations that he should be regularized and that some avenue of promotion should be provided to him. When his representations did not yield any result he filed O.A. No.687 of 1991 before the learned Tribunal in which he made the following amongst other prayers:

> "(i) That the respondents may be directed to provide a better scale of pay to the applicant, that is, the pay scale admissible to Assistant Soil Chemist in Agriculture Department of H.P. with effect from his initial appointment.
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> (ii) That respondents may be directed to give all consequential benefits, including arrears of salary subsequent to the grant of a higher scale to the applicant with effect from his initial appointment.
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> (iii) That the respondents may be directed to revise the pay scale of the applicant with effect from 1.1.1986 with all consequential benefits.
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> (iv) That respondents may be directed to confirm/regularize the applicant as an Assistant Chemist with effect from 3.12.1970.
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> (v) That in the alternative a provision may be made for the grant of higher pay scale after 8 years of service and 18 years of service as has been done in the case of Hydro-Chemists or Junior Hydrologists working in the Department of Irrigation and Power, Govt. of Punjab.
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> (vi) That the respondents may be directed to make a provision for further promotion from the post of Asstt. Chemist by framing Recruitment and Promotion Rules to that effect."

This O.A. was contested by the State and the learned Tribunal vide the impugned order has directed that the services of the petitioner be regularized/confirmed against a regular post.

We have heard Sh.K.D.Shreedhar, learned counsel for the petitioner and Sh.M.S.Chandel, learned Advocate General for the respondents.

This case discloses an unfortunate saga wherein a person has served for 30 years and was not regularized and it was only after the Tribunal passed the orders that his services were regularized. The stand of the State before the learned Tribunal was that there was no post available and therefore the services of the petitioner could not be regularized. This stand on the face of it is incorrect. A perusal of the letter Annexure A-5 attached to the writ petition clearly shows that the Government of Himachal Pradesh had sanctioned the creation of one temporary post of Assistant Chemist in the pay scale of Rs.160-400 with effect from 30th April, 1974. It is beyond our comprehension why this post which had been duly sanctioned was not filled in. The petitioner who had been engaged on work-charge basis in 1970 was continued as work-charge till his services were regularized after the passing of the impugned order.

Normally this Court would not interfere in such a matter but here is a case where the State which is expected to be a model employer continued to employ the petitioner on work charge basis even though the post was existed. The post could have been filled up after following the procedure but such ad hoc arrangement should not have been continued for 30 years. No doubt the Tribunal has directed that the services of the petitioner be regularized/confirmed but no date for regularization was given by the Tribunal. We are of the view that the services of the petitioner should be regularized and he should be deemed to be confirmed employee of the respondents with effect from the date of filing of the Original Application. We

accordingly direct that the petitioner shall be deemed to have been in regular service in the post of Assistant Chemist, IPH w.e.f. Ist of June, 1991.

As far as the prayer of the petitioner for grant of better pay scale is concerned this is a policy matter and we cannot give any direction to the State Government to increase the pay scale. The petitioner has claimed the same pay scale which is payable to the Assistant Soil Chemist in Agriculture Department. Even the minimum educational qualifications and nature of duties for these two posts of Assistant Chemist and Assistant Soil Chemist are different, therefore, the petitioner cannot claim parity of pay with the Assistant Soil Chemist.

Another prayer made by the petitioner is that he should be granted some avenue of promotion and in the alternative that he may be promoted in the higher scale since he has served the entire service in one post. Sh.K.D.Shreedhar, counsel for the petitioner has placed reliance on **Council of Scientific and Industrial Research and another vs. K.G.S. Bhati and another, (1989) 4 SCC 635, V.Jagannadha Rao and others vs. State of A.P. and others, (2001) 10 SCC 401 and K.T. Veerappa and others vs. State of Karnataka and others, (2006) 9 SCC 406.**

In **K.T. Veerappa's case** the Apex Court held as follows:

> "13.He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the government are also relevant factors. In support of this contention, he has placed reliance on State of Haryana v. Haryana Civil Secretariat

> Personal Staff Assn. and Union of India v. S.B. Vohra. There is no dispute nor can there by any to the principle as settled in State of Haryana vs. Haryana Civil Secretariat Personal Staff Assn. that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.
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> 14.In S.B. Vohra case this Court dealing with the fixation of pay scales of officers of the High Court of Delhi (Assistant Registrars) has held that the fixation of pay scale is within the exclusive domain of the Chief Justice, subject to approval of President/Governor of the State and the matter should either be examined by an expert body or in its absence by the Chief Justice and the Central/State Government should attend to the suggestions of the Chief Justice with reasonable promptitude so as to satisfy the test of Article 14 of the Constitution of India. Further, it is observed that financial implications vis-à-vis effect of grant of a particular scale of pay may not always be a sufficient reason and differences should be mutually discussed and tried to be solved."

From a perusal of the aforesaid law it is apparent that the Apex Court has held that the job of fixation of pay scale and parity in pay scales falls within the domain of the executive and the scope of judicial review of such action is very limited. The Apex Court has held that the Courts can interfere in such matters also when the decision is unreasonable, unjust and prejudicial to a section of employees.

Now it is well settled law that no employee has a right to claim promotion. No doubt the Apex Court has held that the employer should try and make promotional avenues open to the petitioner but these are policy matters which are to be decided by the employer and no directions can be issued to the employer to act in a

particular manner. This Court cannot direct the employer to create a promotion post for the employee. We are also not unmindful of the fact that though the petitioner was placed on the work charge establishment he has been given his revised pay scales from time to time. He was granted increments and placed in a higher pay scale. He has also been given benefit of the assured career promotion scheme as and when it fell due.

Keeping in view the entire discussion, we are of the considered view that the only relief which can be granted to the petitioner is that he shall be regularized in the post of Assistant Chemist, IPH w.e.f. Ist of June, 1991 with all consequential benefits. The order of the learned Tribunal is modified to this extent and the writ petition is disposed of in the aforesaid terms. No order as to costs.

(Deepak Gupta),
Judge

July 12, 2007.
PV

(V.K. Ahuja),
Judge